IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.1021 OF 2003
IN
SUMMERY SUIT NO. 3040 OF 2003

Rukmanidevi N. Agarwal. ... Plaintiff.

V/s.

Sampat Traders Pvt. Ltd. ... Defendant.

Mr. Mr. Chetan B. Raithatha i/b. S. Ashwini Kumar & Co. for the Plaintiff.
None for the Defendant.

CORAM : DR. D.Y. CHANDRACHUD,J.

18TH JUNE 2007.

P.C. :-

. The Suit under Order 37 of the Code of Civil Procedure, 1908 has been instituted in order to recover monies lent and advanced by the Plaintiff to the Defendant. Between 3rd April 1997 and 19th April 1999, the Plaintiff advanced a sum of Rs.7.50 lakhs to the Defendant by six cheques drawn on the Bank of India. The Defendant paid an amount of Rs. 1.00 lakh by cheque on 2nd November 1998 leaving a balance of Rs.6.50 lakhs. Thereafter, it has been averred that the Defendant paid interest at the rate of 15% per

annum and sought renewal of the loan. Interest payments were made between January 1998 and 5th October 2000. A confirmation of the loan due and payable by the Defendant to the Plaintiff was furnished by the Defendant on 30th June 2001. There was no reply to an Advocate's Notice addressed on behalf of the Plaintiff.

2. In the reply to the Summons for Judgment, it has been submitted that since the last cheque towards the loan was remitted on 19th April 1999, the Suit which was instituted on 16th September 2003 is barred by limitation. There is absolutely no merit in the defence. As averred in paragraph 4 of the plaint, it is evident that payments on account of interest were made from time to time. The last payment was made on 5th October 2000. The suit is therefore instituted within the prescribed period of limitation.

3. The next defence is that the suit has been instituted on monies due at the foot of an account and is not maintainable as a Summary Suit.

4. This suit was part of a group of matters in which a reference had been made to the Full Bench. The

judgment of the Full Bench has been rendered on 26th April 2007 in **Jyotsna K. Valia V/s. M/s. T.S. Parekh & Co.** (Summons for Judgment 1117 of 2003 in Summary Suit 1551 of 2003 and connected matters.) Dealing with the position of a settled account or an account stated, the Full Bench has observed as follows :-

> " In so far as the settled account is concerned, it is no doubt true as noticed by the learned single Judge, that the various judgments adverted to, for holding that the summary suit would lie on a settled account, either of the Privy Council or of the Supreme Court did not arise from suits filed as summary suits. However, after the judgment of the Privy Council (Olvira L. Rodrigues) Sequeira (Supra) which has been considered by the Supreme Court in Hiralal & Ors. (supra), a summary suit on a settled account, duly confirmed by the Defendant is maintainable as it is an acknowledgement by the Defendant in the Ledger in which mutual accounts have been entered and the accounts settled between them. Such settling of accounts gives

rise to a written contract on a fresh cause of action, with an implied promise to pay the amount settled. A summary suit would therefore lie on settled accounts duly confirmed by the Defendants. Issue (i) is answered accordingly."

5. In the circumstances, it is apparent that the Defendant has no bona fide defence to the claim in the suit. The Summons for Judgment is accordingly made absolute and the suit shall stand decreed as prayed with the modification that the Plaintiff would be entitled to interest at the rate of 9% per annum from 1st April 2001 until the date of the institution of the suit and at the same rate until payment or realisation.

6. Refund of Court fees if any, as per rules.